

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GABRIEL JOHNSON,

Plaintiff,

v.

ORDER

10-CV-467A(F)

LVNV FUNDING SHERMAN ACQUISITIONS,
MONARCH RECOVERY MANAGEMENT,
CHERYL BARNES,
MARIA LOPEZ,
BILL PARKER,
ALLAN PRESTON,
CAPITAL MANAGEMENT SERVICES,
KEITHA BARBER,
TONI MOREHEAD,
WES CALDWELL,
RESURGENT CAPITAL SERVICES,
CYNTHIA JURGEN, and
OMAR,

Defendants.

By papers filed September 16, 2010, Defendants LVNV Funding Sherman Acquisitions, Monarch Recovery Management, Cheryl Barnes, Bill Parker, Allan Preston, Resurgent Capital Services, Cynthia Jurgen and Omar, move to dismiss or for a more definite statement. Attached to Defendants' motion is a CD filed with the Clerk of Court purporting to be a recording of Plaintiff's conversation with Defendant Monarch which is the basis of Plaintiff's claims against this Defendant.

As Monarch relies on evidence outside the pleadings the court will convert Monarch's motion to one seeking summary judgment pursuant to Fed.R.Civ.P. 56. *Hernandez v. Coffey*, 582 F.3d 303, 307 (2d Cir. 2009) (converting motion to dismiss where movants rely on matters outside the pleadings to motion for summary judgment, and giving *pro se* non-movant notice of conversion and opportunity to respond in opposition).

Accordingly, Plaintiff is advised that failure to respond to Defendants' motion may result in dismissal of Plaintiff's claims against Monarch on the merits and with prejudice.

Further, Defendants are directed to file and serve Plaintiff **within 10 days** of this Order a certified transcript of the full text of the conversations allegedly recorded on the CD filed by Defendants in support of its motion as the court declines to consider Defendants' motion based on the CD filed with the court. Without such a transcript it will be unduly burdensome for the court to carefully review its contents and correctly reference to pertinent information in any written decision. Failure to do so will result in the court refraining from considering the contents of the CD.

SO ORDERED.

/s/ Leslie G. Foschio

LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

Dated: November 3, 2010
Buffalo, New York